

The Perils of Unjust Enrichment Claims

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PRACTICES Litigation, International Arbitration

In the recent case of *Dargamo Holdings Ltd v Avonwick Holdings Ltd* [2021] EWCA Civ 1149, the English Court of Appeal considered when a claim in unjust enrichment can succeed where the parties' have made an allocation of risk under a valid and subsisting contract. This decision is interesting for what it says about the interaction between contractual obligations and restitution claims. The case also reminds those involved in the negotiation of commercial contracts of the benefits of reflecting the precise terms of their agreement, including any expectations or understandings between the parties about what the contract provides for, in a written and signed legal document.

Background

This case arises from the break-up of a business relationship between three Ukrainian businessmen, Vitali Gaiduk, Oleg Mkrтчan and Sergei Taruta. Mr Gaiduk controlled a company called Avonwick Holdings Ltd. Mr Taruta controlled a company called Dargamo Holdings Ltd. In 2009, Avonwick agreed to sell to Dargamo its interest in a company called Industrial Union of the Donbass. The sale was conducted via the sale of shares in a company called Castlerose Ltd, which held the relevant interest, for a consideration of US\$950m.

It was common ground that the purchase price in the share purchase agreement (the "Castlerose SPA") represented not only payment for the shares in the company to be transferred, but also an advance payment for other assets (specifically, shares in other companies) to be transferred to Dargamo at a later date under contractual documentation to be agreed in due course. However, those further assets were not mentioned in the Castlerose SPA, which only referred to the sale and purchase of the shares in Castlerose Ltd. The parties came to dispute the exact terms on which the additional assets would be transferred, resulting in those assets never being transferred to Dargamo.

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